SINGAPORE REPORTS.

In Re HONG CHEW DECEASED; NG LYE HUAT v. HONG ENG HWEE AND 4 ORS.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.)
May 24, 1950]

[Singapore — Originating Summons No. 229 of 1949]

Civil Law Ordinance, s. 11 — Devise of properties subject to mortgages — Direction for payment of debts out of portion of personal estate — Whether devisees were entitled to take properties free of mortgage.

The testator in this case by his will devised certain properties, some of which were subject to mortgages. He also directed that his debts should be paid out of a fund forming part of his personal estate and consisting only of personalty. The question raised was whether the devisees were entitled to take the properties devised to them free of the mortgage.

Held, that as the direction for payment of debts in this case was a direction for payment out of a fund consisting entirely of personalty, there is no contrary or other intention expressed and therefore under the provisions of section 11 of the Civil Law Ordinance the devisees take subject to the particular mortgages affecting the land devised to them.

Case referred to:—

(1) *In re Fleck* (1887) 37 Ch. D. 677.

ORIGINATING SUMMONS.

G. E. N. Oehlers for the applicant-executrix.

Ahmad Ibrahim appointed to argue that the devisees took free from the mortgage.

Philip Hoalim appointed to argue *contra*.

Cur. Adv. Vult.

Murray-Aynsley, C. J.: — The testator devised certain properties, some of which were subject to mortgages.

The will contained the following clauses:—

"I bequeath all my moveable property including all money owned by me and all money owed to me including the money which shall become due under the life insurance policies Nos. 3145716 and 3157405 entered into by me with the Sun Life Insurance Company of Canada to my Trustee in trust to pay all my debts funeral and testamentary expenses and death duties due upon my Estate and to hold the balance remaining in trust for my wife the said Ng Lye Huat absolutely.

"I bequeath to my Trustee the benefit of any contract entered into by me before my death as Labour Contractor, and I direct my Trustee to carry out the said contracts, and to hold the net profits arising therefrom in trust to use the same as my Trustee thinks fit for the maintenance of my family house hereinafter referred to and for the maintenance of my wife and children natural and adopted residing therein."

In the circumstances the question arises whether the devisees take subject to mortgages.

Apart from legislation the devisees would take free of mortgages. The relevant legislation here is section 11 of the Civil Law Ordinance (Cap. 42). Sub-section (1) reads as follows:—

"If any person dies or has died seized of or entitled to any estate or interest in any immoveable property, which is at the time of his death charged with the payment of any sum or sums of money by way of mortgage, and such person has not by his will or deed or other document signified any contrary or other intention, the devisee to whom such immoveable property is devised, shall not be entitled to have the mortgage debt discharged or satisfied out of the moveable or any other immoveable property of such person."

This may be taken to have the same effect as the English Real Estate Charges Act of 1854, the first of the "Locke King's Acts".

By that Act the presumption was reversed. Unless the testator "by his will or deed or other document" had "signified any contrary or other intention" devisees took subject to mortgages.

The interpretation of this enactment by the English Courts gave rise to considerable controversy. The prevailing current of decision was that a direction in the usual form to pay debts out of personalty was evidence of a contrary intention. Seeing that mortgage debts are debts it is hard to see how the Courts could have come to any other conclusion. Of course, a direction to pay debts out of any other source than the mortgaged property would equally have evidenced a contrary intention. This result seems to have disappointed those responsible for the ill-drafted measure. In consequence of this a further Act was passed, the Real Estate Charges Act of 1867, a measure even more ill-drafted. The substance of that Act is to be found in the local sub-section (3) which reads as follows:—

"In the construction of the will of any person a general direction that the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule contained in this section unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his immoveable estate."

The result of that sub-section appears to me to be as follows. A direction to pay debts remains evidence of a contrary intention unless the direction is "a general direction that the debts of the testator shall be paid out of his personal estate". There are two things to be considered: the debts to be paid, and the fund out of which they are to be paid.

In the present case the direction is general as regards debts in that it does not specify any particular kind of debts, whether mortgage debts or otherwise. (Contrast *In re Fleck*[1]). On the other hand it is not a direction to pay out of the personal estate *simpliciter*

but out of a fund which forms part of the personal estate and consists only of personalty. In the English cases most of the controversy has arisen over the provision of a special fund which has had a mixed character, part realty and part personalty. I think that it is now decided that in the cases of a mixed fund the Act of 1867 does not apply at least until the fund is exhausted. But I am unable to find any case where the Act did not apply to a fund consisting entirely of personalty. The word 'general' applies to the debts to be paid, not to the fund out of which the debts are to be paid. It is not as though the Ordinance said out of the personalty generally.

From this it follows that the devisees take subject to the particular mortgages affecting the land devised to them.

This follows from a rule of construction imposed by statute which produces a result possibly different from what the testator intended.

The costs of all parties, solicitor and client, to be paid out of the estate.

Order accordingly.

MOHAMED BIN SIDIN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) May 24, 1950]

[Singapore — Magistrate's Appeal No. 49 of 1950]

Prevention of Corruption Ordinance, s. 3(a) — Evidence against accused by Police and of an accomplice — Marked notes found in pocket of accused — Weight of evidence.

The Anti-Corruption Branch of the C.I.D. used an agent to trap the appellant, a senior Police Inspector. The agent was provided with certain notes and, with another man who desired to bribe the appellant, met him at a room in a hotel. After the meeting the notes were found in the possession of the appellant in his trouser pocket. The appellant denied taking the notes and denied having any knowledge that these notes were in his pocket. The only evidence as to how the notes got into the pocket of the appellant was that of the agent and the other man. The agent in cross-examination was shown to be quite reckless about committing perjury and the other man was an accomplice. The appellant was convicted and sentenced.

Held, that in the circumstances the evidence of the agent and the other man must be received with the greatest caution and that the learned District Judge, where the appellant was seen with his hands in his pockets after the money had got there, was wrong, without evidence as to what else, if anything, the pocket contained, in coming to the conclusion that it was impossible for the appellant to fail to be conscious of such notes, especially where the appellant had earlier on consumed considerable quantities of strong drink, though not drunk, and therefore in all the circumstances it would be unsafe to convict.

MAGISTRATE'S APPEAL.

D. K. Walters and *Wee Chong Jin* for the appellant.

A. V. Winslow (D. P. P.) for the Crown.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant had been charged with a series of offences under section 3 (a) of the Prevention of Corruption Ordinance (No. 41 of 1937). He was acquitted of all the charges except one. On this charge he was convicted and sentenced.

The facts are simple. The authorities wished to set a trap for the appellant. To do this they made use of an agent, who was not a member of the Police Force. On the day in question there was a meeting between the appellant, this agent and another man who desired to bribe the appellant. The agent was provided with certain notes. After the meeting these notes were found in the possession of the appellant, in his trouser pocket. That much is certain. As to how these notes got into the pocket of the appellant the prosecution depended entirely on the evidence of the agent and of the other man who was, in the full sense of the term, an accomplice. The agent was not technically an accomplice, but, from his admissions in cross-examination, it is clear that he is quite reckless about committing perjury. If the evidence of these witnesses could be accepted there would be no doubt about the guilt of the appellant. In the circumstances their evidence must be received with the greatest caution. While it is, of course, difficult to obtain satisfactory evidence in the cases, it must be remembered that it is very easy to fake a case of this kind, and, in the case of an unpopular and zealous officer, such a thing is quite likely to happen. An agent of the type employed in this case would not, in all probability, be at all scrupulous as to the method he employed in transferring the notes in question onto the possession of the appellant. The learned District Judge, in my opinion, was correct in his view of the case when he considered that it turned on the possibility of the appellant being ignorant of the fact that these notes were in his pocket. If such a thing were possible then in the circumstances the crime would not have been proved.

The meeting took place after the appellant had attended a party at which he had consumed considerable quantities of strong drink, though he was not in any way drunk. After the money was in his pocket he was seen with his hands in his pockets. I do not